

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JILL ALTMAN, individually and on behalf)	
of a class,)	
)	
Plaintiff,)	Civil Action No.:
)	1:15-cv-02451-SCJ-JKL
vs.)	
)	
WHITE HOUSE BLACK MARKET,)	
INC., and DOES 1-10,)	
)	
Defendants.)	

**DEFENDANT WHITE HOUSE BLACK MARKET, INC.’S REPLY IN
SUPPORT OF MOTION FOR LEAVE TO FILE SUR-REPLY IN
OPPOSITION TO PLAINTIFF’S MOTION FOR CLASS CERTIFICATION**

Defendant, White House Black Market, Inc. (“WHBM”), submits its reply in further support of its motion for leave to file sur-reply in opposition to Plaintiff’s motion for class certification.

ARGUMENT

Plaintiff focuses exclusively on whether its class certification reply raises one or more new “issues.” From that false premise, Plaintiff proceeds to argue that the sur-reply should be rejected because neither her Coker citation nor her submission of the Lamer declaration presents “new issues” – the ultimate straw

man argument. The problem for Plaintiff is that a “new issue” is not the standard for sur-replies. As this Court has held, a sur-reply is proper if the movant “raises new arguments or facts in a reply brief.” *Atlanta Fiberglass USA, LLC, v. KPI, Co.*, 911 F. Supp. 2d 1245, 1262 (N.D. Ga. 2012) (Court granting leave to file sur-reply where reply brief “presented new *facts and evidence* to the Court”) (emphasis added). It cannot be disputed – and, in fact, Plaintiff does not dispute – that a sworn declaration of counsel in a reply brief constitutes “new evidence” warranting a sur-reply.

Plaintiff purports to, in effect, withdraw the Lamer declaration (Doc. 92 at 7-8), but she has filed no motion or notice to that effect. Absent such a filing, the Court should either strike the declaration or require Mr. Lamer to be deposed on the alleged facts to which he testifies.

As for her expert, Mr. Coker, Plaintiff concedes that nothing in Mr. Coker’s report is “about class certification.” (Doc. 92 at 4.) Plaintiff instead argues that inclusion of Mr. Coker’s testimony in her reply brief was proper because “he had no reason to know whether or not his opinions might relate to class certification.” (*Id.*). That is simply non-sensical. Mr. Coker has been retained by Plaintiff’s counsel’s firm in numerous class action cases brought under FACTA. It is reasonable to assume that he knows that his testimony will be used to advance the

cause of Plaintiff, including having her case certified. But even that is beside the point because Mr. Coker testified, under oath, that he had not been retained to give opinions on any class certification issues – yet Plaintiff cites him for exactly that purpose in her reply brief. The Court should reject Mr. Coker’s testimony as it relates to class certification or allow WHBM to depose him on that testimony.

Respectfully submitted this 15th day of September, 2017.

KING & SPALDING LLP

/s/ Barry Goheen

Barry Goheen (Ga. Bar No. 299203)
J. Anthony Love (Ga. Bar No. 459155)
1180 Peachtree Street N.E.
Atlanta, Georgia 30309-3521
Tel: (404) 572-4600
Fax: (404) 572-5100
Email: bgoheen@kslaw.com
Email: tlove@kslaw.com

*Attorneys for Defendant White House Black
Market, Inc.*

CERTIFICATE OF COMPLIANCE

The undersigned certifies that 14-point Times New Roman was used for this document and that it has been formatted in compliance with Local Rule 5.1.

DATED: September 15, 2017.

/s/ Barry Goheen

Barry Goheen

CERTIFICATE OF SERVICE

This is to certify that I have this day filed a true and correct copy of the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

Justin T. Holcombe
Kris Skaar
Skaar & Feagle, LLP
133 Mirramont Lake Drive
Woodstock, GA 30189
jholcombe@skaarandfeagle.com
kskaar@skaarandfeagle.com

Cliff R. Dorsen
Skaar & Feagle, LLP
2374 Main Street, Suite B
Tucker, GA 30084
cdorsen@skaarandfeagle.com

Bryant T. Lamer
Spencer Fane Britt & Brown - MO
STE 1400
Kansas City, MO 64106
blamer@spencerfane.com

Michael S. Hilicki
Keith James Keogh
Keogh Law, Ltd.
55 W. Monroe, Ste. 3390
Chicago, IL 60603
MHilicki@keoghlaw.com
Keith@keoghlaw.com

Attorneys for Plaintiff

DATED: September 15, 2017.

/s/ Barry Goheen
Barry Goheen